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Don Magner

Proc. II

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE: B-185205**

**DATE: January 27, 1977**

**MATTER OF: Union Minerals & Alloys Corporation**

**DIGEST:**

Protest alleging that agency improperly determined that highest bid submitted for purchase of surplus vessel was unreasonably low is denied where agency has broad statutory authority to determine minimum acceptable price, record does not indicate that agency determination was unreasonable or arbitrary, and neither statute nor legislative history compels conclusion that agency must determine value of vessel prior to sale.

Union Minerals & Alloys Corporation (Union) protests the rejection of its bid on a surplus vessel submitted in response to sales invitation for bids (IFB) No. PD-X-1000, issued by the Maritime Administration (MarAd), United States Department of Commerce, on September 4, 1975. Union contends that its high bid should be reinstated and accepted for award because MarAd improperly determined that its bid was too low.

The record shows that after bids were received, MarAd determined the value of the ship in question by considering East Coast (where the vessel was located) and European scrap markets and concluded that the high bid was "too low in light of current factors for the East Coast market." Union contends that MarAd's view of those scrap prices was distorted and that in fact those prices were at a low level rather than "up slightly" as viewed by MarAd. On the other hand, MarAd states that the determination of whether a particular bid is adequate " \* \* \* is a market judgment matter based on the current market situation \* \* \* " and that "many facts and conditions \* \* \* are brought into the considerations from which an acceptable price is developed." MarAd points out that it attempts "to obtain the best possible return for the Government" and that "differences of opinion between MarAd and the bidders are to be expected and should routinely occur in the normal course of business." In response, Union states that the "whole problem" stems from MarAd's failure to set minimum acceptable bids prior to bid opening and that MarAd's current procedure gives too much discretion to the agency official who decides if a bid should be accepted.

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This sale was conducted under the authority of section 508 of the Merchant Marine Act of 1936 (46 U.S.C. 81198) which reads as follows:

"If the Secretary of Commerce shall determine that any vessel transferred to the Department of Commerce, as the successor to the United States Maritime Commission, or hereafter acquired, is of insufficient value for commercial or military operation to warrant its further preservation, the Secretary is authorized (1) to scrap said vessel, or (2) to sell such vessel for cash, after appraisal and due advertisement, and upon competitive sealed bids, either to citizens of the United States or to aliens \* \* \*."

In conducting disposal sales under the above statute, MarAd has adopted the guidelines contained in section 5 of the Merchant Marine Act of 1920 (46 U.S.C. 8864), which states:

"\* \* \* The Secretary in fixing or accepting the sale price of such vessels shall take into consideration the prevailing domestic and foreign market price of, the available supply of, and the demand for vessels, existing freight rates and prospects of their maintenance, the cost of constructing vessels of similar types under prevailing conditions, as well as the cost of the construction or purchase price of the vessels to be sold, and any other facts or conditions that would influence a prudent, solvent business man in the sale of similar vessels or property which he is not forced to sell. \* \* \*"

We have held that MarAd has broad discretion under these statutes to establish minimum acceptable prices for ships being sold and may properly consider such things as foreign and domestic scrap markets in determining minimum acceptable prices. See Nicolai Joffe Corporation, 54 Comp. Gen. 830 (1975), 75-1 CPD 204; Nicolai Joffe Corporation (Reconsideration), 56 Comp. Gen. \_\_\_\_\_, B-180769, January 6, 1977, 77-1 CPD \_\_\_\_\_. Although Union does not agree with how MarAd arrived at its minimum price in this case, Union has not established that MarAd abused its broad discretion in giving the particular consideration it gave to the East Coast and foreign scrap markets or in otherwise determining the minimum acceptable price for the vessel on which Union bid.

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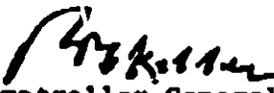
With regard to MarAd's practice of establishing minimum acceptable prices after rather than prior to bid opening, we see nothing in either the relevant statute (46 U.S.C. 41158) or its legislative history which would compel the conclusion that MarAd must conduct a vessel appraisal or disclose such a price prior to the solicitation of bids. See Nicolai Joffe Corporation (Reconsideration), supra. Moreover, in the cited case we reconsidered and modified our conclusion in the original Joffe decision that such disclosure was required by competitive bidding principles, stating:

"\* \* \* although pre-bid disclosure would place bidders on notice of what MarAd considers to be a minimum acceptable price and would therefore enable would-be bidders to avoid bidding in situations in which they were not interested in meeting MarAd's minimum price, it would not resolve the basic question of the reasonableness or arbitrariness of MarAd's minimum price determination."

With regard to the discretion of a single official to determine bid acceptability, it may be that one individual is primarily involved in determining what a minimum acceptable price should be. However, MarAd, in connection with Nicolai Joffe Corporation (Reconsideration), supra, reported that the minimum price is officially established not by a single official, but by a committee of three members of MarAd's Office of Domestic Shipping in the presence of a member of MarAd's Office of General Counsel, and that the award of vessels occurs only after that committee has met and made its determination.

For the foregoing reasons, the protest is denied. However, we point out that in our view, the problem highlighted by this and the Joffe protest is related not so much to the point in time at which vessel appraisal is made, but to the reasonableness of what MarAd does and does not take into account in determining minimum acceptable bids. Although, as indicated above, we are unable to conclude that MarAd has abused its broad discretion in this case, we remain concerned over the high bid rejection rate associated with MarAd ship sales. For that reason, we recently recommended to the Secretary of Commerce that MarAd consider taking into account certain additional factors when it determines minimum acceptable bids. Nicolai Joffe Corporation (Reconsideration), supra.

Deputy

  
Comptroller General  
of the United States